**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE**

SERVPRO INTELLECTUAL PROPERTY, INC. and SERVPRO INDUSTRIES, INC.,	)	
Plaintiffs,	)	
	)	**Case No. __________**
v.	)	**District Judge __________**
	)	**Magistrate Judge ________**
ADVANTACLEAN SYSTEMS, INC.	)	
Defendant.	)	
	)	**JURY TRIAL DEMANDED**

COMPLAINT

Servpro Intellectual Property, Inc. and Servpro Industries, Inc. file this Complaint for trademark infringement and unfair competition against AdvantaClean Systems, Inc. and states as follows:

PARTIES

1. Servpro Intellectual Property, Inc. and Servpro Industries, Inc. (collectively "Servpro") both have their principal place of business at 801 Industrial Boulevard, Gallatin, Tennessee 37066.

2. Upon information and belief, AdvantaClean Systems, Inc. ("AdvantaClean" or "Defendant") is a corporation organized under the laws of the State of North Carolina.

3. Upon information and belief, AdvantaClean's principal place of business is 107 Parr Drive, Huntersville, North Carolina 28078-5936.

4. AdvantaClean's registered business address listed in the records of the North Carolina Secretary of State is 107 Parr Drive, Huntersville, North Carolina 28078-5936.

5. AdvantaClean has franchisees across the United States including in Tennessee and specifically in Middle Tennessee.

BACKGROUND

6. In business since 1967, Servpro Industries, Inc. is one of the world's largest providers of cleanup and restoration products and services.

7. Servpro Industries, Inc. has more than 1,700 franchisees operating nationwide.

8. Since at least as early as May of 2010, Servpro Industries, Inc. and its franchisees have delivered services to customers under the trademark "HERE TO HELP".

9. The services offered by Servpro or its franchisees include carpet, furniture and drapery cleaning services; restoration of building structures damaged by fire, water and other catastrophes both indoors and outdoors; restoration of furniture damaged by fire, water and other catastrophes; and mold remediation services.

10. Servpro Intellectual Property, Inc. is the owner of at least two trademark registrations for "HERE TO HELP", namely:

    a. Servpro Intellectual Property, Inc. is the owner of U.S. Trademark Registration No. 4,515,449 (Exhibit 1 hereto) in connection with "carpet, furniture and drapery cleaning services; restoration of building structures damaged by fire, water and other catastrophes both indoors and outdoors; restoration of furniture damaged by fire, water and other catastrophes" for the trademark "HERE TO HELP";

b. Servpro Intellectual Property, Inc. is the owner of U.S. Trademark Registration No. 4,515,470 (Exhibit 2 hereto) in connection with "mold remediation services" for the trademark "HERE TO HELP";

11. Servpro's trademark registrations for "HERE TO HELP" and common law rights in the phrase "HERE TO HELP" are collectively referred to as the ""HERE TO HELP" Marks."

12. Servpro Industries, Inc. is the exclusive licensee of the "HERE TO HELP" Marks and has extensively used the "HERE TO HELP" Marks nationally.

13. Servpro Industries, Inc. and its franchisees have spent vast sums in promoting the "HERE TO HELP" Marks.

14. Servpro Industries, Inc. and its franchisees have provided large amounts of services under the "HERE TO HELP" Marks.

15. Consumers have purchased valuable and large amounts of services under the "HERE TO HELP" Marks.

16. As a result of this extensive use and promotion of HERE TO HELP, Servpro has developed significant and extensive good will in HERE TO HELP nationally.

17. As a result, HERE TO HELP is a strong mark throughout the United States.

INFRINGING ACTIVITY

18. AdvantaClean has franchisees across the United States.

19. AdvantaClean appears to maintain websites for each of its franchisees.

20. AdvantaClean maintains a website for itself located at the domain name "http://advantaclean.com/" (the "AdvantaClean Website").

21. The AdvantaClean Website uses the HERE TO HELP trademark as follows (highlighting added):

WE ARE HERE TO HELP.

Day or night, we're open. If you have emergency water damage, or questions or concerns about an indoor air quality issue in your home or building, our offices are staffed 24 hours a day, 7 days a week. We have knowledgeable and friendly professionals available to schedule an appointment or answer any questions you have. Call us today!

22. This use infringes the "HERE TO HELP" Marks.

23. The AdvantaClean Website uses "HERE TO HELP" as follows (highlighting added):

COMMERCIAL WATER REMOVAL AND WATER REMEDIATION

If you have commercial water damage, AdvantaClean is here to help.

24. The subsequent use of HERE TO HELP combined with the first use infringes the "HERE TO HELP" Marks.

25. Upon information and belief, AdvantaClean maintains or controls websites for its franchisees, including by operating them as subdomains owned by AdvantaClean ("Franchisee Websites").

26. Some of the Franchisee Websites include use the "HERE TO HELP" Marks.

27. The phrase HERE TO HELP is used scores of times in a trademark way on the AdvantaClean Website and Franchisee Websites.

28. The AdvantaClean call center answers the phone by saying, "AdvantaClean, Here to Help."

29. The pervasive use of the phrase "HERE TO HELP" by AdvantaClean shows an intentional and willing adoption of Servpro's "HERE TO HELP" Marks.

30. The AdvantaClean Website directs consumers to local franchisees, including to the local franchisees in Tennessee in general and Middle Tennessee in particular, and to Franchisee Websites, including the Franchisee Website for the franchisee in Middle Tennessee.

31. AdvantaClean and its franchisees offer services including carpet, furniture and drapery cleaning services; restoration of building structures damaged by fire, water and other catastrophes both indoors and outdoors; restoration of furniture damaged by fire, water and other catastrophes; and mold remediation services.

32. AdvantaClean's use of HERE TO HELP is likely to create confusion among the consuming public as to source, origin, sponsorship, or affiliation.

33. By using HERE TO HELP in the body of the text of the AdvantaClean Website, AdvantaClean takes advantage of search engine optimization to benefit itself and its franchisees.

34. By using HERE TO HELP in the body of the text of the Franchisee Websites, AdvantaClean takes advantage of search engine optimization to benefit itself and its franchisees.

35. Defendant's use of HERE TO HELP is not authorized by Servpro.

36. Defendant's use of HERE TO HELP is neither fair use nor in good faith.

JURISDICTION AND VENUE

37. Subject matter jurisdiction for the trademark infringement and unfair competition claims exists with respect to the claims asserted in this Complaint pursuant to 28 U.S.C. § 1331 and 1338 because trademark infringement is a federal question under 15 U.S.C. § 1111 *et seq.* and unfair competition is a supplemental question arising out of the same facts and circumstances 28 U.S.C. § 1367.

38. Venue is proper in this Court in accordance with 28 U.S.C. § 1391 because AdvantaClean does business in the Middle District of Tennessee and AdvantaClean solicits customers in Middle Tennessee through advertising, the AdvantaClean Website, and Franchisee

Websites operating as subdomains. The AdvantaClean Website, which contains infringing uses, allows customers to search for franchisees in Middle Tennessee.

39. The Court has personal jurisdiction over Defendant because Defendant engages in business in Tennessee and has franchisees that are located in Tennessee.

40. Further, the website complained of herein is directed to many states including Tennessee.

41. Similarly, the exercise of personal jurisdiction over Defendant comports with due process requirements of the United States Constitution because: (a) Defendant has purposefully established "minimum contacts" with the State of Tennessee, and (b) the exercise of personal jurisdiction over Defendant will not offend the traditional notions of fair play and substantial justice. Therefore, this Court has specific and general jurisdiction over Defendant.

CAUSES OF ACTION

Count I - Trademark Infringement (15 U.S.C. § 1114)

42. Servpro realleges and incorporates by reference each of the numbered paragraphs above as if fully set forth herein.

43. By displaying "HERE TO HELP" on its website, AdvantaClean is using the "HERE TO HELP" Marks in a manner likely to create confusion among the consuming public as to source, origin, sponsorship, and/or affiliation.

44. Such display of "HERE TO HELP" improves the search engine optimization for the AdvantaClean Website and Franchisee Websites.

45. By saying "HERE TO HELP" when it answers customers' calls, AdvantaClean is using the "HERE TO HELP" Marks in a manner likely to create confusion among the consuming public as to source, origin, sponsorship, and/or affiliation.

46. Defendant's conduct relating to the use of HERE TO HELP is without the permission of Servpro.

47. Defendant is thus in violation of 15 U.S.C. § 1114.

48. Such acts by Defendant cause Servpro irreparable harm as to which Servpro is entitled to a temporary restraining order, preliminary injunction, and permanent injunction pursuant to 15 U.S.C. § 1116.

49. Such acts further cause harm to Servpro as to which Servpro is entitled to recover actual damages pursuant to 15 U.S.C. § 1117 as well as the costs of any necessary corrective advertising.

50. Given that Defendant's conduct is willful, Servpro is entitled to an accounting of profits, attorneys' fees, and multiplied damages pursuant to 15 U.S.C. § 1117.

Count II - Trademark Infringement (15 U.S.C. § 1125)

51. Servpro realleges and incorporates by reference each of the numbered paragraphs above as if fully set forth herein.

52. By displaying "HERE TO HELP" on its website, AdvantaClean is using the "HERE TO HELP" Marks in a manner likely to create confusion among the consuming public as to source, origin, sponsorship, and/or affiliation.

53. Such display of "HERE TO HELP" improves the search engine optimization for the AdvantaClean Website and Franchisee Websites.

54. By saying "HERE TO HELP" when it answers customers' calls, AdvantaClean is using the "HERE TO HELP" Marks in a manner likely to create confusion among the consuming public as to source, origin, sponsorship, and/or affiliation.

55. Defendant's conduct relating to the use of HERE TO HELP is without the permission of Servpro.

56. Defendant is thus in violation of 15 U.S.C. § 1125.

57. Such acts by Defendant cause Servpro irreparable harm as to which Servpro is entitled to a temporary restraining order, preliminary injunction, and permanent injunction pursuant to 15 U.S.C. § 1116.

58. Such acts further cause harm to Servpro as to which Servpro is entitled to recover actual damages pursuant to 15 U.S.C. § 1117 as well as the costs of any necessary corrective advertising.

59. Given that Defendant's conduct is willful, Servpro is entitled to an accounting of profits, attorneys' fees, and multiplied damages pursuant to 15 U.S.C. § 1117.

Count III - Unfair Competition

60. SERVPRO realleges and incorporates by reference each of the numbered paragraphs above as if fully set forth herein.

61. Defendant has no right to use the "HERE TO HELP" Marks in connection with their goods or services, yet Defendant has passed off its services to the public as if they are the goods or services of Servpro.

62. Defendant has acted with an intent to deceive the public as to the source of its goods and services, and the public has been confused or deceived as to the true source of Defendant's goods and services and their rights and authority regarding use of the mark HERE TO HELP.

63. Defendant's unlawful usurpation of Servpro's rights and property constitutes unfair competition under the common law of Tennessee.

WHEREFORE, Servpro respectfully prays that this Court grant the following relief:

A. That the Court enter injunctive relief, ordering that Defendant, as well as its franchisees, officers, agents, servants, employees, attorneys and all others in active concert or participation with them, are enjoined and restrained from:

1. Engaging in any conduct that infringes the "HERE TO HELP" Marks;
2. Offering any goods or services using any mark containing the phrase HERE TO HELP;
3. Offering any goods or services using any mark containing the mark HERE TO HELP or any similar mark;
4. Engaging in any advertising that tends in a false or misleading manner to associate Defendant's goods or services with Servpro or Servpro's goods or services;
5. Using "HERE TO HELP" or any derivations thereof in any search engine optimization scheme, program, or efforts, including Google AdWords and similar applications, or as metadata;
6. Engaging in any advertising that tends to adversely affect the public's perception of Servpro or Servpro's goods or services.

B. That the Court enter preliminary and permanent injunctive relief ordering Defendant, in accordance with 15 U.S.C. § 1116, to file a verified report with this Court within thirty (30) days of the Court's entry of the order for injunctive relief, specifying in detail the manner and form in which Defendant has complied with the injunction and order of this Court.

C. That the Court award Servpro damages, an accounting of profits, and attorneys' fees and costs;

D. That the Court award Servpro multiplied damages because of Defendant's willful wrongful conduct;

E. A trial by jury as to all issues; and

F. That the Court award such further relief as is merited under law and equity.

Respectfully submitted,

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Edward D. Lanquist, Jr. (BPR 13303)
Scott M. Douglass (BPR 31097)
Patterson Intellectual Property Law, P.C.
Suite 500, Roundabout Plaza
1600 Division Street
Nashville TN 37203
(615) 242-2400
edl@iplawgroup.com
smd@iplawgroup.com

Attorneys for Plaintiffs Servpro Intellectual Property, Inc. and Servpro Industries, Inc.